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In the Matter of

Commission Inquiry on Competitive Bidding
Process for Report to Congress

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Docket No. WT 97-150

COMMENTS OF GTE SERVICE CORPORATION

GTE Service Corporation and its telephone
and wireless companies

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SUMMARY

As the Commission prepares its report to Congress concerning competitive bidding, it is critical that the Commission place in proper perspective the role of competitive bidding in spectrum management. Auctions help the Commission award licenses to entities that most highly value the spectrum. The Commission must, however, also take into account the significant public interest factors and statutory obligations that necessarily guide spectrum planning decisions. The Commission should therefore not permit the potential revenues to be derived from auctions to lure it away from sound spectrum management. Moreover, there are some services where auctions simply are not appropriate.

With respect to the revenues to be derived from auctions, there are a number of factors that will influence bidders' decisions:

- Amount of spectrum;
- Location of spectrum in band;
- Current occupants;
- Number of licenses being awarded;
- Size of serving area;
- FCC rules regarding eligibility;
- Timing; and
- After-market opportunities.

The Commission's decision on each of the factors will drive not only the revenues that can be projected for a particular auction but also other public policy considerations

(e.g., promoting participation by new entrants). GTE urges the Commission to ensure that in balancing its competing objectives and imposing eligibility and related safeguards, the Commission does not inadvertently limit participation in auctions by all interested and qualified entities.

In assessing various auction methodologies, GTE believes it is critical that the Commission establish rules in advance of scheduled auctions, and then not arbitrarily change the rules in the midst of the process. Potentially interested participants need time to assess service and auction rules and make decisions about auction strategy. Potential and actual bidders need to be able to rely upon the policies in place at the beginning of an auction.

Auctions have helped to facilitate the introduction of new services as well as participation by new entrants. Competition will proliferate new service offerings to meet the needs of the public.

The Commission has recognized the importance of permitting certain after-market transactions. In that regard, partitioning rules have helped to facilitate entry by rural telephone companies into PCS and to bring service to sparsely populated areas.

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GTE Service Corporation, on behalf of its telephone and wireless companies ("GTE"), hereby submits its comments in response to the Commission's Public Notice, *Commission Opens Inquiry on Competitive Bidding Process for Report to Congress*.¹

The Commission has sought comment in this proceeding to prepare a report to Congress detailing the effectiveness of the spectrum auctions held to date. While competitive bidding is an economically efficient means to license some services, GTE believes it is critical to bear in mind that any method for granting licenses is simply one part of the Commission's larger, overall spectrum management process. Accordingly, in reviewing the past performance of auctions as well as in evaluating possible revisions to its competitive bidding policies, the Commission must consider competitive bidding as the tool that it is and not as a panacea for federal budgetary woes.

¹ Docket No. WT 97-150, FCC 97-232 (July 2, 1997) ("*Notice*").

I. PRELIMINARY STATEMENT

Congress granted the Commission authority to award radio station authorizations by competitive bidding in Section 309(j) of the Communications Act of 1934, as amended.² Congress believed that competitive bidding would “ensure that spectrum is used more productively and efficiently than if handed out for free,” and would encourage “rapid deployment of new technology.”³ As the Commission observes in the *Notice*, the Commission has interpreted its mandate to require the Commission to “promote opportunity and competition by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants.”⁴ As the Commission is well aware, however, the review and grant of applications for radio station authorizations — whatever the selection technique — is only one small part of the process of managing the spectrum under the Commission’s jurisdiction. The Commission must consider many other significant factors to ensure that spectrum is used effectively and efficiently to meet the needs of telecommunications users consistent with the public interest.

Although competitive bidding has played a prominent role in the Commission’s spectrum management process, the Commission should not conduct this assessment of its auction policies in a vacuum. Overseeing the efficient use of spectrum consistent

² 47 U.S.C. § 309(j).

³ H.R. Rep. No. 103-111, at 576 (1993), *reprinted in* 1993 U.S.C.C.A.N. 378, 576.

⁴ *Notice* at 1.

with the statutory requirements involves much more than simply deciding what entities are to hold radio station authorizations. The Commission must, among other things, allocate spectrum for a wide variety of uses, determine the appropriate bandwidth for particular types of services, establish technical rules to prevent interference with other spectrum users, and assess appropriate licensee qualifications requirements.

Auctions provide the significant benefit of granting radio authorizations to those entities that most highly value the particular spectrum and “plac[ing] licenses in the hands of parties able to use them most efficiently.”⁵ The revenue-producing effect of auctions, however, should not drive the Commission’s decisions whether to use competitive bidding and in evaluating its effectiveness. For example, Congress mandated that the Commission hastily auction the spectrum licensed under the Wireless Communications Service (“WCS”) in the expectation that substantial funds could be raised to reduce the federal budget deficit. Unfortunately, the compressed period of time imposed by Congress for the Commission to adopt WCS rules and policies and conduct the auction was inadequate to permit the development of a service for which there was any level of certain demand by carriers or telecommunications users. It was also unclear at the time of the auction what equipment would be available that would not interfere with pre-existing uses in nearby spectrum bands. Similarly, it was unclear what services could be provided to the public over the WCS frequencies.

⁵ *Implementation of Section 309(j) of the Communications Act - Competitive Bidding*, 9 FCC Rcd 2348, 2350 (1994).

Because there was a rush to establish operational and technical rules, there simply was insufficient time for the marketplace to work effectively.

The WCS experience suggests that competitive bidding cannot be hastily implemented, and certainly cannot be the driving factor in spectrum management decisions. Instead, Congress and the Commission need to ensure that spectrum assignment decisions promote the viable usage of spectrum by the ultimate licensees. This may mean allowing sufficient time for manufacturers to develop the network and user equipment essential for carriers to build a viable system that will be used by members of the public. In addition, there must be adequate time for the development of rules and policies to permit interference-free operation within the frequencies allocated to the new service as well as in adjacent frequencies. All interested parties must have adequate time to evaluate the rules adopted by the Commission, research options for spectrum usage, secure access to capital, and prepare a strategy for participating in the auction. These and similar steps will enhance and promote more efficient, innovative spectrum use, with the added benefit of increased auction receipts; hasty implementation of new services through auctions premised largely on meeting federal budget needs will not.

In addition to learning from the WCS experience that successful spectrum management is not furthered by focusing primarily on concerns related to the competitive bidding process, the Commission must be careful not to prescribe competitive bidding as the licensing mechanism for those services where it is not suitable. For example, competitive bidding does not appear to be appropriate in circumstances where licensees are not assigned discrete frequencies on which to

operate but must share all the channels allocated for the service.⁶ The licensees must closely and extensively cooperate with one another in order to minimize harmful interference and to maximize efficiency, frequency usage, and their ability to serve customers with a very limited resource. Given the nature of air-ground service as originally established and licensed by the Commission, it would be inappropriate now, at a much later date, to consider the licensing of additional competitors by competitive bidding.

GTE likewise believes that auctions are not the appropriate tool for bringing cellular service to areas adjacent to the Gulf of Mexico.⁷ Cellular operations in the Gulf of Mexico and adjacent areas have been uniquely affected by a court remand of a small portion of the Commission's cellular rules while the remainder of the FCC's revamped cellular structure went into effect. As a result, land-based licensees adjacent to the Gulf of Mexico have been hindered in their ability to provide service throughout the MSA or RSA in which they originally were licensed. Rather than create a new category of service areas and hold auctions to license those regions, the public interest in obtaining quality cellular service on an expedited basis in the Gulf of Mexico coastal areas would be best served by implementing GTE's proposal to expand land-based cellular markets and redefining the Gulf of Mexico Service Area.

⁶ For example, Part 22 air-ground service licensees must share channels. See 47 C.F.R. §§ 22.857 *et al.*

⁷ See Comments of GTE Service Corporation, WT Dkt. No. 97-112 (filed July 2, 1997).

Finally, consistent with the statutory grant of auction authority,⁸ auctions are not an appropriate mechanism to grant renewals of existing licenses. Licensees must be provided a renewal expectancy based on their performance during the license term consistent with the Commission's articulated standards.⁹ Reauctioning spectrum where a licensee has met those standards would disrupt service to the public, result in inefficient and wasteful use of resources when established systems must be dismantled and new facilities constructed, and devalue the spectrum. Accordingly, the Commission should not take any steps that would allow it to replace the current renewal expectancy procedures applicable to particular services with a competitive bidding process.

II. SPECIFIC ISSUES RAISED BY THE *NOTICE*

GTE now addresses the specific categories of issues raised by the Commission in its *Notice* soliciting public comment.

A. Projection of Revenues From the Use of Competitive Bidding Systems

The strength of revenue production in any particular auction will be influenced by several different factors. Although as detailed above auctions should not be used for their revenue-generating property alone, the Commission can project auction revenues only by a careful analysis of these factors.

⁸ 47 U.S.C. § 309(j)(1) (referring to "mutually exclusive applications . . . accepted for filing for any *initial* license or construction permit) (emphasis added).

⁹ See, e.g., 47 C.F.R. § 22.940(a)(1), 24.16.

Amount of Spectrum. Larger blocks of spectrum generally will have a higher value than smaller blocks because of the increased capacity associated with the additional frequencies. A larger block of frequencies affords a licensee more flexibility concerning spectrum use as well as in technology and equipment choices. The size of spectrum blocks released for licensing will be affected by a number of public policy considerations. For example, the total amount of spectrum available for licensing in a particular band may be limited, thus defining the amount of frequency that can be allocated for any particular license. Spectrum likewise may be allocated for narrowly defined uses in some services (which clearly was the case in the past for many services), and the nature of the expected spectrum usage may dictate the size of the frequency block to be awarded to any particular licensee. The Commission also may seek to promote competition in a particular service by allocating small blocks of spectrum to a greater number of licensees within a particular geographic market. Similarly, the Commission may seek to license service areas of different sizes, and that choice also may affect the amount of spectrum available to any particular licensee.

Location of Spectrum in the Band. Lower frequencies generally are more valuable than higher frequencies because technology has been well developed in most cases for frequencies below 3 GHz. While equipment manufacturers and other innovators have been developing new equipment designed to operate effectively on frequencies above 3 GHz, it is still more difficult to obtain efficient, reasonably priced equipment for use in such frequencies. In addition, higher frequencies have shorter propagation distances than lower frequencies. Thus, operations on a higher frequency

band will require more equipment and accordingly more capital funds than similar operations at lower frequencies.

At the same time, the revenue to be received from lower band licenses *may* be reduced by pre-existing levels of usage. Attempting to overlay an auction-based licensing plan on existing operations is more likely to result in different bidding receipts than the auction of “clear” spectrum for a new service.

Current Occupants. Relocation of incumbents currently operating in a band to permit an auction winner to proceed to install and operate a new system is obviously a factor to be considered when a potential applicant is developing its auction strategy. The cost of relocating incumbents as well as the timing of their relocation have clear implications for an applicant’s potential construction and operation plan, and thus will affect the amounts to be bid for licenses at auction. For example, broadband PCS licensees must pay to relocate existing microwave licensees operating within their licensed service areas. The number of microwave links to be relocated may vary from channel block to channel block, and from one service area to another. GTE understands that D and E block bids may have been somewhat lower in recognition of microwave relocation needs.

In addition, there may be incumbents that are entitled to retain their existing operations, subject to applicable interference-related requirements, even when the Commission has auctioned an authorization for a market area that includes the existing

incumbent's operations.¹⁰ The gaps in coverage in the auction winner's system and the frequent need to negotiate with these incumbent operators will be factors affecting the business plans and valuations for certain spectrum licenses.

Number of Licenses Being Awarded. The availability of more licenses does not equate to higher revenues being generated at auction. Rather, in valuing a particular license, bidders will take into account the level of competition, both from other licensees within the service as well as from operators authorized in other frequency bands. If a bidder perceives that the amount of competition is more limited, it will expect to obtain greater market share, have more customers, and derive more revenue from the particular license. As a result, the bidder is likely to assess a higher value for the authorization at issue.

Size of Serving Area. Larger license areas are generally greater in value than smaller license areas. In many services, a national license at a single frequency would have the greatest value. There are several reasons why the Commission has not always offered nationwide licenses. For example, multiple service areas, in lieu of one nationwide license, increase the opportunities for interested parties to enter the market. Also, where the Commission has sought to overlay market area licensing and auction rules on an established service, it has looked to the nature of current operations to

¹⁰ For example, in Part 22 and Part 90 services, the Commission plans to permit all incumbent paging operators to retain existing service areas while the Commission auctions market area licenses encompassing those incumbent service areas. See *Revision of Part 22 and Part 90 of the Commission's Rules To Facilitate Future Development of Paging Systems*, FCC 97-59 (Feb. 24, 1997) (Second Report and Order and Further Notice of Proposed Rulemaking).

determine the size of appropriate service areas. The Commission has often sought to ensure that the bidding process allows for license aggregation to allow a licensee to build a larger service area.

FCC Rules Regarding Eligibility. The Commission has used eligibility rules in an effort to achieve various goals other than the allocation of spectrum to the entity that most highly values it. For example, the Commission imposed significant limitations on the entities eligible to bid for PCS licenses (*i.e.*, cellular licensees) in an effort to promote competition in the wireless industry. The exclusion of some potential bidders, however, may result in barring from the auction those entities that in fact would pay the highest amounts for licenses as well as highly capable parties with significant relevant experience.

The Commission also has used eligibility rules, in combination with auction benefits such as bidding credits and installment payments, to promote participation by certain types of entities in a particular service. While these rules promote other goals pursued by the Commission, they will not maximize the revenues that will be derived from the auction. Also, bidding credits, by their very nature, will reduce revenues and can result in mischaracterizing the correct market value of the licenses.

Reliance on spectrum caps may thwart the ability of existing telecommunications service providers to develop new technologies. For example, companies are pursuing opportunities to develop and provide fixed wireless services. A current CMRS licensee, perhaps affiliated with a local exchange carrier, may find its ability to provide fixed wireless services over new spectrum hindered by the Commission's application of a spectrum cap.

Similarly, attribution rules and associated eligibility exclusions may impede the ability of telecommunications operators to provide one-stop shopping. Narrow limits on overlapping ownership and geographic service areas may raise a bar to a carrier's entry into a particular wireless service.

In order to promote maximum participation in auctions, the Commission should revisit its spectrum cap, eligibility, and attribution rules to ensure that they do not penalize parties that do not exercise any kind of control. This will help to ensure that the auctions are inclusive of all qualified parties, and more effectively promote efficient spectrum use by the parties who most highly value the spectrum.

Timing. The timing of spectrum auctions clearly can affect the revenues to be generated. For example, the level of bidding at a particular auction may reflect the performance of the stock market during the period. Alternatively, if potential licensees have access to adequate spectrum in other services, or are in the midst of constructing recently authorized systems, they simply may not participate in an auction for licenses that otherwise would be of interest to them. Also, auctions conducted under unreasonably compressed time frames can severely limit the ability of potential bidders to secure necessary capital for their business plans.

After-Market Opportunities. Whether auction winners have some ability to trade or sell licenses obtained through competitive bidding also should affect the valuation of spectrum. If a bidder expects that it can trade an authorization in exchange for a license that more closely fits into its business plan, that bidder may be willing to pay a higher price than otherwise would be the case.

In each licensing process, the Commission will achieve a different balance among these factors. Bidders will accordingly act based on the many considerations confronting the Commission as it allocates the spectrum for a new service, establishes appropriate technical rules, and adopts an auction mechanism.

B. Comparison of Different Methodologies

1. Maintaining Consistent Rules

In applying competitive bidding methodologies and associated rules to particular services, it is important for the Commission to establish those rules well in advance of the auction and to maintain and apply them consistently. Importantly, interested parties need time to evaluate the implications of the rules (including technical and operational policies) to assess the value of the spectrum for auction. If the rules are repeatedly changed prior to the commencement of the auction, bidders must continuously re-work their valuation models, which adds substantial cost to the bid preparation activities.

Even more significantly, however, the Commission should not change its rules in the midst of the process. As GTE has pointed out in the Commission's proceeding to determine whether to revise the C and F block auction rules after the conclusion of the auctions, an alteration of the Commission's rules would undermine the integrity of the Commission's auction process and would also unfairly prejudice those entities that formed their business plans based on the expectation that the Commission would

strictly enforce its rules and policies existing at the time of the auction.¹¹ Commission action to alter the C and F block licensing rules at this late date would not only be unfair to all bidders, it would alter incentives for future auctions, increase uncertainty, and likely reduce the revenue generated by all future auctions.

Numerous parties have pointed out that many entities made decisions to participate or not participate in the auctions based on the applicable rules,¹² especially as those rules affected the amounts being bid during the C and F block auctions. To change the terms of the auction rules as applied to some entities would be fundamentally unfair to entities that dropped out of the bidding as well as to those license holders that made certain they could meet their financial obligations. Finally, as the Commission is aware, interested parties have made clear that, if special dispensations are granted to some of the C and F block auction winners, there will be litigation challenging such action.¹³

More generally, if the Commission alters the rules of the road at this stage in the C and F block licensing process, all future auctions will be clouded with uncertainty as to whether the Commission will be prepared to relieve the problems of those entities

¹¹ Reply Comments of GTE Service Corporation, WT Dkt. No. 97-82, at 1 (filed July 8, 1997).

¹² E.g., Comments of Sprint Corp., WT Dkt. No. 97-82, at 2 (filed June 23, 1997); Comments of Nextel Communications, Inc., WT Dkt. No. 97-82, at 8-9 (filed June 23, 1997); Comments of Airadigm Communications, Inc., WT Dkt. No. 97-82, at 3-4 (filed June 23, 1997).

¹³ Quentin Hardy and Bryan Greeley, *FCC Auction Designed To Favor Little Guys Threatens To Sink Some*, Wall St. J., Aug. 1, 1997, at A1.

whose bids may not be soundly based. The Commission will provide an incentive to parties to “game” future auctions in the expectation that some form of relief will be forthcoming. Moreover, those entities who participate in future auctions will be left to wonder about the soundness of their spectrum valuation in light of changes the Commission might make at a later date.

For these reasons, the Commission must ensure that bidders have reasonable assurance that what they think they are getting is close to what they do get in a spectrum auction, and that there will be no FCC rule changes either before or after the fact that create fundamental changes to valuation assumptions. Otherwise, bidders will submit low bids as a precautionary offset to that uncertainty.

By the same token, GTE does not believe that the rules adopted for a particular service should be inscribed in stone. Rather, the Commission must be careful not to change the rules at a stage in the process where the incentives of potential or actual bidders are changed. There will be times where it is appropriate to reevaluate the continuing need for rules, and where doing so is consistent with the public interest as well as the valuation of spectrum.

2. Mechanics of Past Auctions

Apart from GTE’s concern that the Commission not alter auction and related licensing rules in a manner that has adverse consequences on the public interest, GTE wishes to commend the Commission on the mechanics of many of its auctions. It is GTE’s experience that the mechanisms established for registration, bid entry, and the downloading of the results of each round generally worked very well. The tools made

available by the Commission's processes provided ample opportunity for monitoring and feedback to allow bidders to develop their strategies for subsequent rounds.

GTE suggests that the Commission retain an auction pace that properly takes into account the number of licenses simultaneously up for bid. For example, two bidding rounds per day are appropriate when many licenses are up for bid. A schedule based on this pace makes it easier for bidders to handle the complexity of simultaneous multiple round bidding. Pushing complex auctions to three or more rounds per day too early in the bidding process risks an increase in confusion and would enhance the likelihood of bid withdrawals.

C. Evaluation of How Competitive Bidding Has Facilitated the Introduction of New Technologies and the Entry of New Companies Into the Telecommunications Market

As the Commission recognizes in the *Notice*, spectrum auctions have facilitated the introduction of new services into the market faster than otherwise might have been the case. For example, despite some delays in the process, the broadband PCS auctions in general and the A and B block auction in particular have created new PCS competition in an unprecedented short time frame.

The increasing level of competition in wireless services has sparked the innovative talents of service providers throughout the country. As a result, the American public has seen a proliferation of new service offerings – provided by established telecommunications operators as well as new entrants.

While a competitive bidding process itself may encourage some new entrants to the telecommunications marketplace, it is clear that the Commission's policies designed

specifically to achieve that goal have in fact contributed to the presence of some new entrants. As noted previously, however, the Commission should evaluate its eligibility policies in order to ensure that they promote maximum participation in auctions by *all* interested and qualified entities.

D. Evaluation of How Competitive Bidding Methodologies Have Secured Prompt Delivery of Service to Rural Areas

The Commission's auction rules have also taken into account the need to provide for after-market transactions. An example of such policies are the partitioning and disaggregation opportunities provided in a number of wireless services. GTE believes that the rules permitting the partitioning and disaggregation of spectrum can and are playing an important role in bringing service to rural areas. GTE has consistently supported the opportunity to partition PCS spectrum, initially under the Commission's rules limited to only rural telephone companies, and then when the Commission extended partitioning opportunities to all qualified entities.¹⁴ Many of the service areas licensed by the Commission in PCS and other services are large and/or contain a combination of densely populated and sparsely populated areas.

In many cases, telephone companies serving rural area are best positioned to provide new services to rural areas because of their existing presence in the area. New technology, particularly wireless technology, may offer a far more economic alternative

¹⁴ *Geographic Partitioning and Spectrum disaggregation by Commercial Mobile Radio Service Licensees*, FCC 96-474 (Dec. 20, 1996) (Report and Order and Further Notice of Proposed Rulemaking). Indeed, GTE to date has completed four PCS partitioning transactions, all involving rural telephone companies.

for the provision of telecommunications services in difficult-to-serve rural areas than traditional outside plant wireline approaches. Such companies may also be able to leverage existing assets to enhance the economic viability of new spectrum service offerings.

For the most part, it is too early to assess the overall effect of the Commission's geographic partitioning and spectrum disaggregation policies on the expeditious provision of service to the public generally, and rural areas specifically. Many of the PCS systems still are in a critical build-out stage and are not yet in a position of providing commercial service throughout the licensed area. Additional time is needed in order to determine the efficacy of the Commission's rules in promoting the prompt provision of service to rural areas throughout the country.

E. Evaluation of How the Commission's Competitive Bidding Rules Ensure That Small Businesses, Rural Telephone Companies and Businesses Owned by Women and Members of Minority Groups Have Been Able To Participate Successfully in the Competitive Bidding Process

As noted in Section II.C above, the Commission has designed rules, for example, for the C and F blocks in broadband PCS, that are explicitly intended to promote participation in the telecommunications industry by small businesses, rural telephone companies, and businesses owned by women and members of minority groups. GTE believes that the Commission's own numbers document that these policies, including eligibility limitations, bidding credits, and installment payment plans, have achieved the purposes set forth by the Commission.


These beneficial auction participation terms have been available to all qualified entities. Such advantages, however, will not automatically and in isolation induce the targeted entities to participate in auctions. Rather, potential bidders must take into account a number of other factors, including the size of proposed service areas, available capital resources, evaluation of existing and new competition, and their overall business plan. As a result, regardless of the efforts undertaken by the Commission, small businesses, rural telephone companies, and businesses owned by women and members of minority groups may have decided not to participate in past auctions and may conclude not to become involved with future auctions.

III. CONCLUSION

GTE urges the Commission, in preparing its report to Congress, to ensure that it bears in mind the proper role of competitive bidding in the overall management of spectrum. Competitive bidding cannot be the goal of spectrum policy, but should be regarded as merely a tool. The Commission should continue to strive to ensure that it acts in light of all the relevant factors and considerations, and to design licensing mechanisms — sometimes competitive bidding, sometimes not — that assist in achieving its overall objectives.

Respectfully submitted,

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